

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 4

ENFORCEMENT DIVISION

CHAPTER 24

RELATING TO UNLAWFUL SUSPENSION OR DISCHARGE
UNDER PART III, CHAPTER 313, HAWAII REVISED STATUTES

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Historical note: Chapter 24 of title 12 is based substantially upon "Regulation XXXII, Rules Governing Practice and Procedure on Complaints and Hearings Relating to Unlawful Suspension or Discharge Under Part III, Chapter 378, Hawaii Revised Statutes" of the Department of Labor and Industrial Relations. [Eff. 7/19/63; R 9/11/81]

§12-24-1 Definitions. As used in this chapter:

"Complainant" means the individual who has filed a complaint.

"Complaint" means a verified written statement filed with the department pursuant to this chapter alleging an unlawful suspension, discharge, or discrimination within the meaning of the statute.

"Department" shall be as defined in section 378-31, Hawaii Revised Statutes.

"Director" shall be as defined in section 378-31, Hawaii

Revised Statutes.

"Employee" shall be as defined in section 373-31, Hawaii Revised Statutes.

"Employer" shall be as defined in section 378-31, Hawaii Revised Statutes.

"Employment" means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or illegally entered into.

"Hearing officer" means a person appointed by the director to conduct hearings under this chapter.

"Party" or "parties"-means the complainant or respondent, or both.

"Respondent" means any employer against whom a complaint has been filed alleging an unlawful - suspension, discharge, or discrimination within the meaning of the statute.

"Statute" means part III of chapter 378,. Hawaii Revised Statutes.

"Verified" means sworn to or affirmed before a notary public, hearing officer, or other person authorized by the director to administer oaths.

"Wages" shall be as defined in section 378-31, Hawaii Revised Statutes. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-38)

§12-24-2 General provisions. (a) This chapter sets forth the Procedures for the administration and enforcement of the statute.

(b) These rules shall be liberally construed to accjfff Ilir.%Oe purposes of the statute. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-38)

§12-24-3 Computation of time. The time in which any act provided by this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this chapter, "holiday" includes any day designated as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff. 9/11/81] (Auth: HRS §378-33) (Imp: §378-38)

§12-24-4 Filing of complaint. (a) Any employee claiming to be aggrieved by an alleged unlawful suspension, discharge, or discrimination may file a complaint.

(b) Assistance in drafting and filing complaints shall be available to complainants at the department's enforcement division located at 888 Mililani Street, Room 401, Honolulu, and at the department's district offices on Hawaii, Maui, and Kauai.

(c) The complaint shall be in writing and, where feasible, upon

forms furnished by the department's enforcement division. The complaint shall be signed and verified.

(d) The original complaint and two additional copies shall be filed by personal delivery or by mail addressed to the department's Enforcement Division, 888 Mililani Street, Room 401, Honolulu, Hawaii 96813, or to any of the department's district offices located in the counties of Hawaii, Maui, and Kauai. [Eff. 9/11/81] (Auth: HRS §373-38) (Imp: HRS §378-33)

§12-24-5 Contents of complaint. Each complaint shall contain the following:

- (1) The full name, address, social security number, and telephone number (if any) of the complainant;
- (2) The full name, address, and telephone number of the respondent;
- (3) A plain and concise statement of the facts constituting the alleged unlawful suspension, discharge, or discrimination;
- (4) The date on which the alleged unlawful suspension, discharge, or discrimination occurred; and
- (5) Other information that may be required by the department. Notwithstanding the provisions of this section, a complaint is deemed filed if the department receives from an individual a written statement sufficiently precise to identify the parties and describing with reasonable accuracy the actions alleged to be unlawful. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-33)

§12-24-6 Time for filing complaint. The complaint shall be filed within thirty days after the alleged act of unlawful suspension, discharge, or discrimination. When an alleged act of unlawful discharge under the statute occurs while the aggrieved employee is still physically or mentally incapacitated and unable to work, the complaint shall be filed within thirty days after the date the aggrieved employee is able to return to work. [Eff. 9/11/81] (Auth: HRS §373-38) (Imp: HRS §378-33)

§12-24-7 Service of complaint. Within ten days after a complaint is filed with the department, the department shall serve a copy of the complaint on the respondent by certified mail, return receipt requested, or by personal delivery. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-34)

§12-24-8 Amendment of complaint. (a) A complaint, or any part thereof, may be amended by the complainant at any time prior to the

issuance of a notice of hearing and thereafter at the discretion of the hearing officer.

(b) The amended complaint shall be deemed to have been filed on the original filing date.

(c) The department shall promptly serve a copy of the amended complaint on the respondent by certified mail, return receipt requested, or by personal delivery. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §§378-33, 378-34)

§12-24-9 Withdrawal of complaint. (a) A complaint, or any part thereof, may be withdrawn only on written consent of the hearing officer.

(b) When requesting withdrawal of a complaint, the complainant shall:

- (1) Submit the request in writing;
- (2) Sign the request; and
- (3) Have the request verified.

(c) The department shall notify the respondent of the withdrawal. [Eff. 9/11/81] (Auth. HRS §378-38) (Imp: HRS §§378- 33, 378-34)

§12-24-10 Dismissal of complaint. (a) The hearing officer shall dismiss the complaint:

- (1) If it is determined that the department does not have jurisdiction over the complaint; or
- (2) If the complainant has failed to cooperate with the department in regard to the complaint, and the department has received no response from the complainant within twenty days after the date of the notice to the complainant of the department's intent to dismiss the complaint; or
- (3) If the complainant cannot be located, and the complainant has not responded within .twenty days to a notice sent by the department to the complainant's last known address; or
- (4) If a settlement has been reached between the parties as described in section 12-24-12, which is in writing and specific in its terms.

(b) In the event of any dismissal of a complaint, the complainant shall be notified by certified mail, return receipt requested, of the reason or reasons for dismissal. The respondent shall be notified in writing of the dismissal and of the reasons therefor. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-38)

§12-24-11 Answer. (a) If the respondent files a written verified answer, it shall be filed within twenty days from the date

of personal delivery or mailing of the complaints.

(b) The answer shall state the reasons or factors for the suspension, discharge, or discrimination of the complainant, and any matter which constitutes a defense to the complaint.

(c) The answer with two copies shall be filed by personal delivery or by certified mail, return receipt requested, addressed to the department's Enforcement Division, 888 Mililani Street, Room 401, Honolulu, Hawaii 963.13, or to any of the department's district offices in the counties of Hawaii, Maui, or Kauai in which the complaint was filed. The respondent shall also mail a copy by certified mail, return receipt requested, to the complainant at the last known address.

(d) The time within which the answer shall be filed may be extended at the discretion of the hearing officer.

(e) The answer or any part thereof may be amended prior to the hearing without the hearing officer's consent, and thereafter at the discretion of the hearing officer. If a complaint has been amended subsequent to the filing of the answer, the respondent shall have an opportunity to amend the answer within twenty days after being served the amended complaint. The original of the amended answer shall be filed at the enforcement division of the department, and one copy shall be mailed to the complainant by certified mail, return receipt requested, at the last known address. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-34)

§12-24-12 Prehearing conference. (a) At any time after the filing of a complaint, but prior to the hearing, the hearing officer may hold a preheating conference with the parties or their representatives. Any matter not raised at the preheating conference shall not be allowed during the hearing. Matters to be discussed at the preheating conference may include but are not limited to the following:

- (1) A discussion of the issues raised by the complainant and the explanations and defenses to be presented by the respondent at the hearing;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining stipulations which will avoid unnecessary proof;
- (4) The possibility of a settlement between the parties; and
- (5) Other matters that may aid in the disposition of the complaint.

(b) If the complainant and the respondent agree to the terms of a settlement at the preheating conference, the settlement shall be reduced to writing, signed by the parties, and approved by the

hearing officer. If approved, the case will be closed without a finding on the merits of the complaint and a copy of the final prehearing settlement shall be sent by certified mail, return receipt requested, to the complainant and the respondent.

(c) A prehearing settlement shall not affect the processing of any other complaint, including, but not limited to, complaints in which the allegations are like or related to the individual allegations settled.

(d) if a settlement is achieved, no determination will be made as to whether or not reasonable cause exists to believe that the allegations of the complaint are true. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-38)

§12-24-13 Hearings. (a) All hearings required by this chapter shall be held in accordance with chapter 91, Hawaii Revised Statutes, and the rules of this department.

(b) The complainant shall be present at the hearing, with or without counsel. The complainant shall be allowed to call, examine, and cross-examine witnesses, and introduce papers, documents, or other evidence, in person or by counsel.

(c) The respondent or a representative shall be present at the hearing, with or without counsel, and shall be allowed, in person or by counsel, to call, examine, and cross-examine witnesses and introduce papers, documents, or other evidence.

(d) At the discretion of the hearing officer, any other person may be allowed to participate, in person or by counsel, for the purposes and to the extent that the hearing officer shall determine.

(e) Witnesses at all hearings shall be examined orally, under oath or affirmation, and a record of the proceedings shall be made by the hearing officer. The hearing officer or a person designated by the hearing officer may administer oaths or affirmations at the hearing.

(f) The hearing officer may continue a hearing from day to day or adjourn it to a later day or to a different place by announcement thereof at the hearing or by appropriate notice to all parties. The hearing officer may also continue a hearing upon request of any party. At the discretion of the hearing officer, a hearing may be reopened.

(g) The absence without notice of either the complainant or the respondent at the hearing shall be considered a default as to that party. If the complainant is absent, the complaint shall be promptly dismissed. If the respondent or respondent's representative is absent, the hearing officer shall base the decision on the evidence presented by the complainant at the hearing. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §§378-34, 378-38)

§12-24-14 Powers and duties of hearing officer. (a) The hearing officer shall have full power and authority to:

- (1) Control the procedures of the hearing;
- (2) Admit or exclude testimony or other evidence;
- (3) Rule upon all motions and objections;
- (4) Call and examine witnesses;
- (5) Direct the production of papers or other matter present in the hearing room; and
- (6) Take other actions that are necessary and proper for the conduct of the hearing.

(b) The hearing officer shall submit a recommended decision to the director which shall include findings of fact and conclusions of law. A copy of the hearing officer's recommended decision shall be served by personal delivery or by certified mail, return receipt requested, upon each party.

(c) The hearing officer may issue subpoenas either at will or upon written request of a party to the proceeding whenever necessary to compel the attendance of witnesses and the introduction of books, records, correspondence, documents, papers, or any other evidence which relates to any matter in question before the hearing officer. Where a subpoena is issued at the instance of a party to the proceeding other than the hearing officer, the cost of service and witness and mileage fees shall be borne by the party at whose request the subpoena is issued. Witness and mileage fees shall be the same as fees paid witnesses in the circuit court.

(d) The hearing officer shall, whenever necessary or required during the hearing and on terms and conditions as the hearing officer may determine, take or cause to be taken deposition of witnesses residing within or without the State of Hawaii, in the manner prescribed by law for deposition in civil actions. A request by a party other than the hearing officer for deposition of witnesses shall be in writing. The cost of any deposition shall be borne by the party at whose request the deposition was taken. [Eff. 9/11/81]
(Auth: HRS §378-33) (Imp: HRS §§378-34, 378-38)

§12-24-15 Disposition of recommended decision. (a) Any party may within twenty days after receipt of a copy of the hearing officer's decision file with the director exceptions to the decision or any part thereof and request a review by the director. The party shall specify for each exception the portions of the record and the authorities relied on to sustain each point. Any exception not specifying the portions of the record or the authorities relied upon shall be dismissed by the director. The exceptions and request for review with two copies shall be filed by personal delivery or by certified mail, return receipt requested, addressed to the

department's Enforcement Division, 888 Mililani Street, Room 401, Honolulu, Hawaii 96813, or to the department's district office in the county where the original complaint was filed. In addition, a copy of the exception and request for review shall be served by the party making the exception upon each of the other parties who were served with a copy of the hearing officer's recommended decision.

(b) If no exceptions and requests for review are filed within the time specified, the recommended decision of the hearing officer shall become final upon approval of the director, unless the director orders a review.

(c) Upon filing of exceptions by a party adversely affected by the recommended decision, the director may consider the whole record or portions thereof as cited by the party and may grant the parties an opportunity to present argument. The director shall then make a final decision stating the reasons or basis therefor and enter an appropriate order.

(d) The hearing officer's findings of fact shall not be set aside by the director unless clearly contrary to the weight of evidence. [Eff. 9/11/81] (Auth: HRS §373-38) (Imp: HRS §§91-11, 91-12, 378-38)

§12-24-16 Judicial review. Any person aggrieved by the final decision of the director shall be entitled to judicial review as provided by section 91-14, Hawaii Revised Statutes. [Eff. 9/11/81] (Auth: HRS §378-38) (Imp: HRS §378-36)